

WHITE  
Green  
Bond

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL  
April 7, 1958  
Opinion No. 58-44

REQUESTED BY : The Honorable Ida Ann Westfall  
Justice of the Peace

OPINION BY : ROBERT MORRISON, The Attorney General

QUESTION : Is it legal for a process server to make service  
in cases in which he has become interested to  
the extent of furnishing the bond and collecting  
a bondsman's fee?

CONCLUSION : No.

Rule 4(c), Rules of Civil Procedure, reads as follows:

"Process; by whom served. Service of all process shall be made by a sheriff, by his deputy, or by some person specially appointed by the court or clerk for that purpose, except that a subpoena may be served as provided in Rule 45. Special appointments to serve process shall be made freely when substantial savings in travel fees will result."

Volume 34, Words and Phrases, on page 239, defines "process" as follows:

" ' "Process" is defined by Blackstone to be the means of compelling a defendant to appear in court, and although literally, perhaps, it can only be strictly characterized as the initial step in a case, it has come to be indicated by the two terms, "mesne" and "final", which are used to designate the two stages in the progress of a cause in which it is employed. Process is always directed to some officer to be executed, and is strictly the mandate of the court to the officer, commanding him to do certain things or perform certain services within his official cognizance, and it is this character of it and the injunctions it contains that makes his return evidence." Utica City Bank v. Buell, N. Y., 9 Abb. Prac. 385, 390, 17 How. Prac. 498, 501."

(Emphasis supplied)

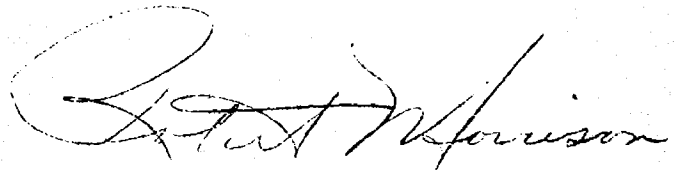
In view of the above, we conclude that a person specifically appointed by the clerk or the court for serving a process becomes an officer of the court for that purpose. This opinion is further strengthened by A. R. S. § 13-811, entitled Abuse of process; penalty, which reads, in part, as follows:

" A public officer or person pretending to be a public officer, who, under pretense or color of any process or other legal authority \* \* \* seizes or levies upon property, \* \* \* without a legal process or other lawful authority therefor, is guilty of a misdemeanor."

Rule 80(g), Rules of Civil Procedure, reads as follows:

" Officer of court or attorney as surety. No officer or attorney of the court shall be accepted as surety upon an undertaking or bond in a judicial action or proceeding."

It is accordingly the opinion of this office that it is not legal for a process server to make service in cases in which he has become interested to the extent of furnishing the bond and collecting a bondsman's fee, in view of the fact that on appointment he becomes an officer of the court for that purpose.



ROBERT MORRISON  
The Attorney General

58-44

NWW:egm